

STATEMENT OF THE CASE

Christine Edwards appeals her sentence following her conviction for Operating a Vehicle While Driving Privileges are Forfeited for Life, a Class C felony, pursuant to her guilty plea. Edwards presents two issues for our review:

1. Whether the trial court abused its discretion when it did not identify mitigating circumstances at sentencing.
2. Whether her sentence is inappropriate in light of the nature of the offense and her character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 12, 2008, Edwards pleaded guilty to operating a vehicle while driving privileges are forfeited for life (“habitual traffic violator” or “HTV”), a Class C felony. At the time of her arrest on October 3, 2007, Edwards was serving probation pursuant to prior convictions: operating a vehicle while an HTV and possession of paraphernalia (pleaded guilty in December 2005); and domestic battery (pleaded guilty in May 2007). At sentencing, the trial court rejected Edwards’ proffered mitigators and identified her criminal history, which includes four prior felony convictions, as an aggravator. Accordingly, the trial court imposed an enhanced sentence of five years executed. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Mitigators

Edwards first contends that the trial court abused its discretion in sentencing her. Sentencing decisions rest within the sound discretion of the trial court and are reviewed

on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh’g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” Id. (quotation omitted).

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91. Further, “the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence.” Id. at 491.

Edwards asserts on appeal that the trial court failed to consider her proffered mitigators, namely: the “nature of events” at the time of her arrest, i.e. that she was driving her daughter to a dentist appointment; her guilty plea; the changes she has made in her life “which make it more likely she will be able to refrain from driving;” and the undue hardship on her young children. Brief of Appellant at 9. But the trial court was free to disregard mitigating factors it did not find to be significant. See Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999). And Edwards carries the burden on appeal of showing that such a disregarded mitigator is significant. See id. We address each proffered mitigator in turn.

First, Edwards points out that the reason she drove on the day of her arrest was because her daughter had recently sustained an injury to her teeth and required treatment. But the trial court expressly rejected that mitigator, stating that other modes of transportation were available to her. Further, Edwards' own testimony shows that she "chose to drive instead of walk" because it was "cold" outside. Sentencing Transcript at 20. Edwards has not shown that the trial court abused its discretion when it did not identify that proffered mitigator.

Next, with regard to Edwards' guilty plea, it is well settled that a guilty plea does not automatically amount to a significant mitigating factor. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied. Indeed, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one. Id. Here, because of the overwhelming evidence of her guilt, Edwards made a pragmatic decision to plead guilty. The trial court did not abuse its discretion in not according her plea mitigating weight.

With regard to the changes Edwards has made in her life to prevent future violations of the law, she has not demonstrated that this proffered mitigator is significant and deserving of mitigating weight. And, finally, while Edwards has demonstrated that her children will suffer hardship while she is incarcerated, the trial court is not required to find that a defendant's incarceration will result in undue hardship upon his dependents. See Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005), trans. denied. The trial court did not abuse its discretion in sentencing Edwards.

Issue Two: Inappropriateness of Sentence

Edwards also argues that her sentence is inappropriate in light of the nature of the offense and her character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration in original).

Edwards’ sentence is not inappropriate. While there is nothing particularly aggravating about the nature of Edwards’ offense, that is not conclusive to our analysis. Rather, we consider both the nature of the offense and the defendant’s character. App. R. 7(B).

Edwards has not demonstrated good character. Edwards’ criminal history consists of four prior felonies dating back to 1994, namely, two OWI convictions and a prior HTV

conviction, as well as four misdemeanor convictions. At the time she was arrested on the instant offense, Edwards was on probation pursuant to two separate causes. Moreover, at the plea hearing, Edwards admitted that she had frequently driven a car despite having her license forfeited for life. She explained that someone had given her a car, and she grew tired of depending on other people to drive her wherever she needed to go. She stated to the court that after dealing with others' "complaints" about having to drive her around, "eventually you just . . . you drive." Transcript at 19.

As the trial court explained,

[p]revious attempts at home detention and suspending sentences in the past [have] not worked. Probation has not worked. Probation wasn't working in this case. . . . You've been treated very leniently over the course of your last ten years or so, with, apparently, Courts knowing that you had prior convictions. . . . It's unfortunate that this type of offense, Driving While Suspended, is a C felony, but it's obvious that it fits people like you who choose to drive regardless of the circumstances, regardless of whether they have a valid driving license and you are truly an habitual offender.

Id. at 48. Edwards has not demonstrated that her sentence is inappropriate in light of the nature of the offense and her character.

Affirmed.

ROBB, J., and MAY, J., concur.